APPEAL NO. 120041
FILED MARCH 12, 2012

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on December 5, 2011, in [City], Texas, with [hearing officer] presiding as hearing officer. The hearing officer determined that the compensable injury of [date of injury], extends to: (1) lumbar MRI findings; (2) Grade I anteriolisthesis of L4 on L5 with moderate spinal stenosis and moderate narrowing of the AP dimension of the neural foramina bilaterally; (3) facet arthropathy; (4) L5-S1 mild disc bulge and mild bilateral facet hypertrophy which abuts the S1 nerves in the canal; (5) cervical MRI findings; (6) C5-6 2 mm concentric posterior annular bulge; and (7) C6-7 2 mm concentric posterior annular bulge (all 7 claimed conditions are referred to as the claimed conditions). The hearing officer also determined that the respondent (claimant) had disability beginning April 15, 2011, and continuing through the date of the CCH.

The appellant (carrier) appealed both the extent of injury and the disability determinations, contending that the designated doctor's opinion should have been given presumptive weight and that there was a lack of expert medical evidence to support the hearing officer's determination on the extent-of-injury issue. The claimant responded, urging affirmance.

DECISION

Affirmed in part and reversed and rendered in part.

The parties stipulated that the claimant sustained a compensable injury on [date of injury]. The hearing officer, in her Background Information, and as reflected by the evidence, commented on the mechanism of the injury as follows:

> . . . when working under a manhole cover [the claimant] became stuck in a quicksand-like substance. As he sank his co-workers placed him in a harness and attached it to a crane. [The] [c]laimant was waist deep in the muck when his co-workers attempted to pull him out. As the crane pulled his upper body, his lower body did not move. The force pulling on his upper body by the crane caused extreme pain to the [c]laimant when he felt a pop in his low back. The [c]laimant yelled for them to stop as the crane was pulling him in half. His co-workers immediately stopped the crane and were forced to dig him out manually using pressure hoses and by cutting off his pants and boots.

The parties also stipulated that the carrier accepted a left shoulder sprain/strain, suprascapular neuropathy of the left shoulder, lumbar sprain/strain, right shoulder sprain/strain, cervicalgia and a cervical strain. The parties further stipulated that [Dr. T] was appointed by the Texas Department of Insurance, Division of Workers' Compensation as the designated doctor to give an opinion on the extent of the compensable injury, maximum medical improvement, impairment rating, whether disability was a direct result of the injury and ability to return to work.

DISABILITY

The hearing officer's determination that the claimant had disability from April 15, 2011, continuing through the date of the CCH is supported by sufficient evidence, and is affirmed.

EXTENT OF INJURY

Section 408.0041(a) provides in part that at the request of an insurance carrier or an employee, or on the commissioner's own order, the commissioner may order a medical examination to resolve any question about: (3) the extent of the employee's compensable injury. Section 408.0041(e) provides in part that the report of the designated doctor has presumptive weight unless the preponderance of the evidence is to the contrary. 28 TEX. ADMIN. CODE § 127.1 (Rule 127.1) provides in part that a designated doctor examination shall be used to resolve questions about the following: (3) the extent of the injured employee's compensable injury.

The claimant had a lumbar MRI performed on October 27, 2010. The impressions on the MRI were "Grade I anteriolisthesis of L4 of L5 with moderate spinal stenosis and moderate narrowing of the AP dimension of the neural foramina bilaterally" (the lumbar MRI findings and the Grade I anteriolisthesis at L4 on L5 are two of the claimed the conditions at issue), facet arthropathy and a finding of lumbar disc bulges. A cervical spine MRI was performed on December 14, 2010, which lists another three of the conditions at issue.

Dr. T, the designated doctor examined the claimant on June 20, 2011, and in a report dated June 27, 2011, noted that the claimant has had conservative care including physical therapy and that the claimant had not had surgery (proposed surgery was denied by the carrier and upheld by an Independent Review Organization). Dr. T noted no diagnostic reports had been submitted for review. Dr. T, on extent of injury, opined:

> It is my opinion the injury sustained on [date of injury], extends to include: [c]ervical strain, lumbar strain, left shoulder sprain/neuropathy, and right shoulder sprain were separate intrinsically and did not spread to other areas or relate to other areas in any way. The stabilized minor nerve damage to unnamed muscular branches, dorsal scapular, long thoracic and suprascapular, upper and lower subscapular, and thoracodorsal, axillary (posterior and anterior branches), medial brachial cutaneous. Injury to both sensory and motor components. Damage was localized to the areas innervated by the above nerves on the left only. There were no signs of damage in any other body region. It is likely related to a pressure/crushing action caused by pulling on the harness.

A letter of clarification was sent to Dr. T, forwarding additional medical records including the above referenced lumbar and cervical MRIs. Dr. T was specifically requested to address the claimed conditions at issue in this case. Dr. T responded by letter dated August 22, 2011, and commented:

> After careful review of the information submitted, I have the following comments to make: [c]ervical and lumbar spine MRI diagnostic findings were related to longstanding degenerative disc disease and degenerative joint disease and are not related to the work injury. The neuropathic items described in the shoulder areas are very questionable as to clinical significance and there is some doubt [. . .] as to whether these too are work related. The extent of injury is to the muscles and ligaments in the affected shoulder areas and in the affected cervical and lumbar spine areas and not further (i.e.) not adjacent soft tissues in each area nor to any other areas involved or not involved regarding the injury.

The hearing officer found that the preponderance of the evidence is contrary to the findings of the designated doctor, Dr. T, regarding the extent of the compensable injury. In her Background Information, the hearing officer, to support her findings, cites the reports of [Dr. D], the claimant's treating doctor, and [Dr. M], a surgeon.

While the claimed conditions are all mentioned in various reports and diagnostic studies, there is insufficient medical evidence linking the claimed conditions to the compensable injury or explaining how the mechanism of the injury caused the claimed conditions. Dr. M, in a medical report dated December 9, 2010, noted the incident involving quicksand and the claimant being pulled by a harness, noted x-rays within

normal limits, and concluded "I suspect the pain that [the claimant] is experiencing is related to the trauma into his body and I am optimistic that with time and conservative treatment, it will continue to improve." In a subsequent report dated December 30, 2010, Dr. M mentioned "the possibility of proceeding with surgical intervention" referring to the cervical disc protrusion at C4-5 and C5-6. Nowhere in those reports does Dr. M discuss causation or how being pulled by the harness might have caused disc protrusions, which the designated doctor said were degenerative in nature.

Dr. D, the treating doctor, in a "To whom it may concern" letter dated November 29, 2011, mentioned Dr. M's diagnosis of L4-5 stenosis and a broad-based disk bulge. Dr. D also noted that Dr. M had requested a cervical MRI and the findings on the cervical MRI were C4-5 and C5-6 disk protrusions. In his letter Dr. D mentioned that another doctor had ordered a lumbar MRI and that it had "positive findings" but Dr. D does not specify what those findings were. Dr. D concluded:

> Although some of his clinical findings through radiological imaging could be considered preexisting, I do believe that his current issues could be directly related to his injury that occurred on [date of injury]. I also feel that his injury could have exacerbated any preexisting issues that [the claimant] may have had.

Dr. D does not relate those conditions specifically identified in his letter to the mechanism of injury but rather only acknowledges that the claimant's "injury could have exacerbated any pre-existing issues." Dr. D does not rule out or consider other causes of those same conditions.

There is insufficient medical evidence in the medical records of Dr. M and Dr. D, as well as other medical records in evidence, to causally link how the claimant's work injury caused the claimed conditions.

The Texas courts have long established the general rule that "expert testimony is necessary to establish causation as to medical conditions outside the common knowledge and experience" of the fact finder. Guevara v. Ferrer, 247 S.W.3d 662 (Tex. 2007). The Appeals Panel has previously held that proof of causation must be established to a reasonable medical probability by expert evidence where the subject is so complex that a fact finder lacks the ability from common knowledge to find a causal connection. Appeal Panel Decision 111262, decided October 18, 2011. *See also* City of Laredo v. Garza, 293 S.W.3d 625 (Tex. App.-San Antonio 2009, no pet.) citing Guevara. In this case, there is insufficient medical evidence that causally connects the lumbar and cervical MRI findings and specific claimed conditions to the work injury. The

mere fact that the conditions are identified on an MRI or are mentioned in a medical report is insufficient to show that those conditions are related to the work injury within a reasonable medical probability as required by Guevara and City of Laredo. Reports which say "could be" or "could have" do not meet the standard of reasonable medical probability required by Guevara and City of Laredo.

In reviewing a "great weight" challenge, we must examine the entire record to determine if: (1) there is only "slight" evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. *See* Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). In this case, we hold the hearing officer's decision that the compensable injury of [date of injury], extends to lumbar MRI findings, Grade I anteriolisthesis of L4 on L5 with moderate spinal stenosis and moderate narrowing of the AP dimension of the neural foramina bilaterally, facet arthropathy, L5-S1 mild disc bulge and mild bilateral facet hypertrophy which abuts the S1 nerves in the canal, cervical MRI findings, C5-6 2 mm concentric posterior annular bulge, and C6-7 2 mm concentric posterior annular bulge, to be so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust.

Accordingly, we reverse the hearing officer's determination that the compensable injury of [date of injury], extends to lumbar MRI findings, Grade I anteriolisthesis of L4 on L5 with moderate spinal stenosis and moderate narrowing of the AP dimension of the neural foramina bilaterally, facet arthropathy, L5-S1 mild disc bulge and mild bilateral facet hypertrophy which abuts the S1 nerves in the canal, cervical MRI findings, C5-6 2 mm concentric posterior annular bulge, and C6-7 2 mm concentric posterior annular bulge, and we render a new decision that the compensable injury of [date of injury], does not extend to the claimed conditions.

SUMMARY

We affirmed the hearing officer's determination that the claimant had disability from April 15, 2011, and continuing to December 5, 2011, the date of the CCH.

We reversed the hearing officer's determination that the compensable injury of [date of injury], extends to lumbar MRI findings, Grade I anteriolisthesis of L4 on L5 with moderate spinal stenosis and moderate narrowing of the AP dimension of the neural foramina bilaterally, facet arthropathy, L5-S1 mild disc bulge and mild bilateral facet hypertrophy which abuts the S1 nerves in the canal, cervical MRI findings, C5-6 2 mm concentric posterior annular bulge, and C6-7 2 mm concentric posterior annular bulge

and we rendered a new decision that the compensable injury of [date of injury], did not extend to the claimed conditions.

The true corporate name of the insurance carrier is **OLD REPUBLIC GENERAL INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
701 BRAZOS STREET, SUITE 1050
AUSTIN, TEXAS 78701-3232.

Thomas A. Knapp
Appeals Judge

CONCUR:

Cynthia A. Brown
Appeals Judge

Margaret L. Turner
Appeals Judge